

**BOARD OF APPEALS
for
MONTGOMERY COUNTY**

**Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600**

<http://www.montgomerycountymd.gov/content/council/boa/board.asp>

Case No. A-6081

PETITION OF DAVID FREVERT
(Hearing held June 29, 2005)

OPINION OF THE BOARD
(Effective date of Opinion, August 10, 2005)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for a variance from Section 59-C-18.113. The petitioner proposes the construction of a one-story addition that requires a variance of two (2) feet as it is within twenty-three (23) feet of the rear lot line. The required setback is twenty-five (25) feet.

The subject property is Lot 30, Block 103, Garrett Park Subdivision, located at 11122 Rokeby Avenue, Garrett Park, Maryland, 20896, in the R-90/Overlay Zone (Tax Account No. 02018324).

Decision of the Board: Requested variance **denied**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioner proposes the construction of a 3.2 x 22.9 foot one-story addition.
2. The petitioner testified that his property is a non-rectangular, corner lot, which has an angled western boundary line. The petitioner testified that the existing residence is sited in the extreme southeast corner of the lot.
3. The petitioner testified that the proposed construction would address the usability of the existing house. The petitioner testified that currently the only access to the second floor and the back yard is through the kitchen and that the proposed addition would provide access to these areas without the need to enter the kitchen.

4. The petitioner testified his lot is 17,394 square feet and that the new construction preserves the property's open green space and would have no impact on the neighboring properties.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variance can not be granted. The requested variance does not comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

(a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The Board finds that although the shape of the petitioner's lot is distinctive, the property has no exceptional topographical or other conditions peculiar to the lot and that new construction could be built on the property without the need for a variance.

The Board notes that the petitioner's lot significantly exceeds the minimum lot size for the zone and that neither the siting of a house nor its internal design are zoning reasons which justify the grant of a variance. See, Exhibit No. 10 [zoning vicinity map].

The petition does not meet the requirements of Section 59-G-1.3(a) and the Board did not consider the other requirements in that section for the grant of a variance. Accordingly, the requested variance of two (2) feet from the required twenty-five (25) foot rear lot line setback for the construction of a one-story addition is denied.

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above be adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Donna L. Barron, with Angelo M. Caputo, Wendell M. Holloway and Allison Ishihara Fultz, Chair, in agreement, the Board adopted the foregoing Resolution.



Allison Ishihara Fultz
Chair, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 10th day of August, 2005.

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve (12) month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.